

14 FEB 1980

PROCUREMENT DIVISION NOTICE NO. 80-3

STAT FROM:
Chief, Procurement Division, OL

SUBJECT: Service Contract Act of 1965

REFERENCE: OGC 80-01225 dtd 12 Feb 80, Same subj

BACKGROUND

1. Referent states that it is permissible to award a service contract to a contractor in those cases where the contractor furnishes a written certification that the Section A, General Provision, Article 21, SERVICE CONTRACT ACT OF 1965, is inapplicable to the type of work to be performed under the specific contract.

2. The referent's language does not permit the explicit deletion of the aforementioned Article. The only basis for such deletion is found in subparagraph 2(c) of referent.

PROCEDURE

1. In those cases where contractors have rejected service contracts because of the inclusion of Section A, Article 21, contracting officers are to solicit a written certification that the Service Contract Act is inapplicable to the contemplated Scope of Work. The contractor must be informed that Article 21 will appear in the General Provisions; however, as stated in the referent, this Agency will not look behind the contractor's certification. In those cases where a contractor agrees to the above, a service contract may be awarded.

2. Copies of contractor certifications and contractor declinations will be forwarded to C/PD/OL. If the contractor verbally declines, contracting officers will forward a brief memorandum to C/PD/OL.

Att

OGC 80-01225

12 February 1980

MEMORANDUM FOR THE RECORD

STAT FROM: [redacted]
Office of General Counsel

SUBJECT: Service Contract Act - [redacted]

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1. On 12 February 1980, I spoke with Mr. William Gross, a wage-hour analyst with the Wage and Hour Division of the Department of Labor (phone: 523-7541). That division is responsible for, among other things, compliance with and enforcement of the Service Contract Act (SCA) provisions. I inquired concerning the case of a contract currently being negotiated between [redacted] and this Agency for the maintenance and repair of ADP equipment. The Agency has sent [redacted] a proposed agreement which incorporates the provisions of the SCA, if applicable. [redacted] has responded with a letter asserting that their employees are not covered by the SCA. [redacted] of ADP&EB/PD/OL inquired whether the Agency should have [redacted] and other such contractors sign a certification stating that they are not covered by the SCA, with the certification becoming part of the contract.

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2. Mr. Gross of the Department of Labor advised that compliance with the SCA is a matter between the contractor and the Labor Department. While the contracting agency is under an obligation to report known violations of the SCA, Mr. Gross explained that the agency involved may take the contractor's representations at face value, without further investigation. As I discussed with [redacted] the Agency has three acceptable options at the present time. The Agency may, in descending order of preference, either:

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- (a) Retain the SCA clause in the contract and obtain a written certification from the contractor that the clause is inapplicable;

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(b) retain the SCA clause in the contract without a certification from the contractor; or

(c) delete the SCA clause from the contract, but only with prior OGC approval and after receipt of a written certification by the contractor that his employees are not covered by the SCA.

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cc: C/PMS/OL
/C/PD/OL
C/ADP&EB/PD/OL
C/P&SCB/PD/OL
C/GPB/PD/OL